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STATE OF ALABAMA

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Honorable Philip Henry Pitts
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Municipalities - City Councils
- Legislation

Provisions of Act No. 87-652
with respect to the election of
aldermen from single member
districts in the City of Selma
prevail over provisions of Act
No. 87-474 on the same subject.

Dear Mr. Pitts:

The Attorney General received your request on behalf of the City of Selma regarding Act No. 87-474 and Act No. 87-652 of the 1987 Regular Legislative Session which pertain to the City of Selma.

Act No. 87-474 amends Code of Alabama 1975, Section 11-43-40 relating to the composition of city councils in cities having a population of 12,000 or more operating with five single-member districts established under a federal court order so as to provide for a procedure to establish a council of not less than five nor more than eight aldermen to be elected from districts and a council president to be elected at large. That act was enacted into law and approved by the Governor on July 22, 1987. Act No. 87-652 amends Code of Alabama 1975, Section 11-43-40 relating to the composition of city councils in the same cities as Act No. 87-474. However, it provides a procedure to establish a council of eight aldermen to be elected from districts and a council president to be elected at large. It was enacted into law and approved by the Governor on August 12, 1987.

You asked the following questions regarding these acts:

"1. Does the act passed by the
Alabama Legislature creating eight single-
member districts with the President of the

City Council being elected at large take precedence over a similar act which created not less than five nor more than eight single-member districts, due to the fact that the eight single-member district act was passed subsequent thereto?

2. Does the act introduced by Senator Sanders repeal provisions of the Representative Cosby legislation pertaining to single-member districts so that Alabama law now only provides for eight single-member districts, with the President of the City Council being elected at large?"

In your request you stated that the City of Selma wished to have legislation enacted which created eight single-member districts for aldermen with the president of the city council being elected at large. The City Council of Selma adopted a resolution requesting the legislative delegation representing the city to introduce legislation to this effect. As a result, the two acts considered herein were enacted - Act No. 87-474 being introduced in the House of Representatives and Act No. 87-652 being introduced in the Senate. Thus, the confusion arose regarding the two acts. It is the desire of the City of Selma that there be eight single-member districts for alderman with the president of the city council elected at large as provided by Act No. 87-652.

Generally, statutes which are enacted in the same legislative session on the same subject are construed in pari materia. State v. Reid, 284 Ala. 191; 223 So.2d 594 (1969). However, if the subsequent act is in conflict with the former act, the subsequent act will prevail. Etheredge v. Hester, 32 Ala. App. 321, 25 So.2d 523 (1946), 2A Sutherland Statutory Construction, § 51.03 (4th ed.)

Furthermore, in determining the legislative intent, one may look to the history of the statute and the purpose to be accomplished. Bowlin Horn v. Citizens Hospital, 425 So.2d 1065 (Ala. 1982). As previously stated, it was the intent of the legislature at the request of the City of Selma to enact a statute providing for aldermen elected from eight single-member districts with the city council president elected at large as specifically provided by Act No. 87-652.

Honorable Philip Henry Pitts
Page Three

Considering the conflicting provisions of Act No. 87-474 and Act No. 87-652 concerning the number of single-member districts for alderman and the intent of the legislature in enacting these acts, it is the opinion of the Attorney General that the provisions of subsequent Act No. 87-652 take precedence where there is conflict with Act No. 87-474.

Turning to your second question, Act No. 87-652 does not have a repealer clause. The general rule is that repeal by implication is not favored. However, in Wallace v. Ball, 205 Ala. 623, 88 So. 44 (1921) the Supreme Court of Alabama concluded that of two acts on the same subject, the one passed and approved two days after the first repeals the first. In Merrell v. City of Huntsville, 460 So.2d 1248 (Ala. 1984), the Alabama Supreme Court ruled that a prior act is repealed by implication if the provisions of a subsequent act are directly repugnant to the former. Therefore, it appears that Act No. 87-652 repeals Act No. 87-474 with respect to single-member districts in the City of Selma so that Alabama law now only provides for eight single-member districts in that city with the president of the city council elected at large.

We note that this state legislation cannot authorize any city currently under specific federal court order to elect aldermen from a certain number of districts or to alter the number or composition of those election districts in derogation of the federal court order.

I hope that your questions have been adequately answered. If our office can be of assistance in the future, please let us know.

Sincerely yours,

DON SIEGELMAN
Attorney General
By:



LYNDA K. OSWALD
Assistant Attorney General

DS/LKO/jho